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10 Attorneys for Chapter 11 Trustee

11
12 IN THE UNITED STATES BANKRUPTCY COURT
13 FOR THE DISTRICT OF OREGON

14 In re
15 Summit Accommodators, Inc., dba Summit
1031 Exchange,
16 Debtor.

17 **KEVIN D. PADRICK, CHAPTER 11**
18 **TRUSTEE,**

19 Plaintiff,

20 v.

21 **MARK A. NEUMAN; BRIAN STEVENS;**
22 **LANE D. LYONS; and TIMOTHY**
23 **LARKIN,**

24 Defendants.
25
26

Case No. 08-37031-rld11

Adv. Proc. No. 09-3086-rld

FIRST AMENDED COMPLAINT

(Breach of Fiduciary Duty; Conversion;
Professional Negligence; Civil
Conspiracy; Aiding and Abetting;
Implied in Law Contract; Constructive
Trust; Accounting; Injunctive Relief;
Turnover of Property)

Kevin D. Padrick, Chapter 11 Trustee, for his First Amended Complaint
(which adds the Ninth Claim for Relief for turnover pursuant to 11 U.S.C. § 542), alleges as
follows:

PARTIES

1. Kevin D. Padrick is the duly-appointed Chapter 11 Trustee ("Trustee")
in the above-captioned bankruptcy proceeding.

2. Summit Accommodators, Inc. is the Debtor ("Debtor") in the above-
captioned bankruptcy proceeding.

3. Defendant Lane D. Lyons ("Lyons") is an individual residing in
Oregon and at all material times was an officer, agent and shareholder of Debtor.

4. Defendant Timothy Larkin ("Larkin") is an individual residing in
Oregon and at all material times was an officer, agent and shareholder of Debtor.

5. Defendant Mark Neuman ("Neuman") is an individual residing in
Oregon and at all material times was an officer, agent and shareholder of Debtor. Defendant
Neuman was also a certified public accountant, licensed in the State of Oregon.

6. Defendant Brian Stevens ("Stevens") is an individual residing in
Oregon and at all material times was an officer, agent and shareholder of Debtor. Defendant
Stevens was also a certified public accountant, licensed in the State of Oregon.

7. Inland Capital Corp. ("Inland") is an Oregon corporation, which at all
material times was owned and controlled by the Defendants.

8. Three Sisters Development Co., Inc. ("Three Sisters") is an Oregon
corporation, which at all material times was owned and controlled by the Defendants.

JURISDICTION AND VENUE

9. Jurisdiction in this adversary proceeding arises pursuant to 28 U.S.C. §
1334(b) and 28 U.S.C. § 157(b).

* * *

1 10. Venue is proper in this District pursuant to 28 U.S.C. § 1409(a). This
2 is a core proceeding under 28 U.S.C. § 157(b)(2).

3 **GENERAL ALLEGATIONS**

4 11. At all material times, Debtor was in the business of facilitating “1031
5 exchanges,” transactions in which taxpayers are able to defer capital gains taxes by
6 exchanging like-kind properties. As a necessary part of many 1031 exchanges, Debtor’s
7 clients (that is, the taxpayers using the Debtor’s exchange services) were required to deposit
8 funds or authorize the deposit of funds (“Exchange Funds”) into accounts controlled by
9 Debtor. The Debtor agreed to hold the Exchange Funds for the benefit of Debtor’s clients.

10 12. Some or all of the Defendants improperly transferred and/or loaned
11 millions of dollars in Exchange Funds to Debtor’s affiliate, Inland, for the personal benefit
12 and use of some or all of the Defendants. Some or all of the Defendants further caused
13 Inland to transfer and/or loan funds from Inland to other related entities and persons for the
14 personal benefit or use of some or all of the Defendants.

15 13. As a result of these improper transfers and/or loans, Debtor is now
16 unable to return Exchange Funds to certain of Debtor’s clients (“Exchange Creditors”), in an
17 amount exceeding \$13 million. In some cases, Exchange Creditors were also unable to
18 complete their 1031 exchanges, causing them to lose the tax benefit of the 1031 exchange.

19 14. Some or all of the Defendants also continued to induce Exchange
20 Creditors to deposit funds into accounts controlled by Debtor, during a time period in which
21 the exchange account balances were insufficient to cover the amounts owing on the current
22 1031 exchanges that Debtor was handling. As a result, money received from new Exchange
23 Creditors, during this time, was being used to fund other 1031 exchanges.

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1 **FIRST CLAIM FOR RELIEF**

2 **(Breach of Fiduciary Duty Owing to Exchange Creditors - Against All Defendants)**

3 15. Trustee realleges all preceding paragraphs.

4 16. Defendants owe and owed fiduciary duties to the Exchange Creditors,
5 including the duties of undivided loyalty, honesty and due care.

6 17. Some or all of the Defendants breached their fiduciary duties to the
7 Exchange Creditors by using and diverting the Exchange Funds for the personal benefit of
8 some or all of the Defendants, including by transferring and/or lending the Exchange Funds
9 to Inland and by causing Inland to transfer and/or loan money to some or all of the
10 Defendants and other related entities and persons. Any Defendants that did not breach the
11 fiduciary duties they owe and owed to the Exchange Creditors in the manner described in the
12 preceding sentence, breached their fiduciary duties to the Exchange Creditors by failing to
13 exercise due care to discover and discontinue the diversion of Exchange Funds for the
14 personal benefit of some or all of the Defendants.

15 18. The Defendants' breaches of their fiduciary duties caused substantial
16 damage to the Exchange Creditors, in an amount exceeding \$13 million.

17 **SECOND CLAIM FOR RELIEF**

18 **(Breach of Fiduciary Duty Owing to Debtor - Against All Defendants)**

19 19. Trustee realleges all preceding paragraphs.

20 20. Defendants owed fiduciary duties to Debtor in their capacity as
21 Debtor's officers, employees and/or agents, including the duties of undivided loyalty, honesty
22 and due care.

23 21. Some or all of the Defendants breached their fiduciary duties to Debtor
24 by using and/or diverting funds belonging to Debtor and/or Debtor's clients for the personal
25 benefit of some or all of the Defendants. Any Defendants that did not breach the fiduciary
26 duties they owed to Debtor in the manner described in the preceding sentence, breached their

1 fiduciary duties to the Debtor by failing to exercise due care to discover and discontinue the
2 diversion of funds belonging to Debtor or Debtor's clients for the personal benefit of some or
3 all of the Defendants.

4 22. Defendants' conduct has damaged Debtor in an amount exceeding \$13
5 million.

6 **THIRD CLAIM FOR RELIEF**

7 **(Conversion - Against All Defendants)**

8 23. Trustee realleges all preceding paragraphs.

9 24. Defendants caused or otherwise enabled or allowed the transfer and/or
10 loan of the Exchange Funds and/or other funds from Debtor to Inland for the personal benefit
11 or use of some or all the Defendants. Defendants thus converted the Exchange Funds and/or
12 other funds.

13 25. The Exchange Creditors and Debtor have been damaged by
14 Defendants' conversion of the Exchange Funds and/or other funds, in an amount exceeding
15 \$13 million.

16 **FOURTH CLAIM FOR RELIEF**

17 **(Professional Negligence – Against All Defendants)**

18 26. Trustee realleges all preceding paragraphs.

19 27. Defendants (including Defendants Stevens and Neuman, both of
20 whom were licensed accountants) were engaged in providing financial and/or tax planning
21 advice to the Exchange Creditors. As such, Defendants owed a duty to the Exchange
22 Creditors to exercise due care and to advise the Exchange Creditors in a manner that was
23 financially sound and prudent.

24 28. Defendants breached that duty by advising the Exchange Creditors to
25 place funds in accounts that Defendants knew or should have known were unsafe and subject
26 to an unreasonable risk of loss.

29. Defendants' breaches of the aforementioned duty caused damage to the Exchange Creditors, in an amount exceeding \$13 million.

FIFTH CLAIM FOR RELIEF

(Civil Conspiracy/Aiding and Abetting - Against All Defendants)

30. Trustee realleges all preceding paragraphs.

31. Each of the Defendants knew or had reason to know that the other Defendants' conduct as alleged above was tortious.

32. Defendants' tortious conduct was pursuant to a plan or agreement among all of them. Moreover, each of the Defendants encouraged and substantially assisted the other Defendants in their tortious conduct.

33. Defendants are jointly and severally liable for all other Defendants' tortious conduct, in an amount exceeding \$13 million.

SIXTH CLAIM FOR RELIEF

(Implied-in-Law Contract with Exchange Creditors – Against All Defendants)

34. Trustee realleges all preceding paragraphs.

35. The Exchange Creditors conferred a benefit on the Defendants, in the form of depositing the Exchange Funds in accounts controlled by Debtor that were ultimately transferred and/or loaned for the personal benefit or use of some or all of the Defendants.

36. Defendants were aware of the benefit conferred on them by the Exchange Creditors.

37. It would be unjust to allow Defendants to retain the benefit conferred on them by the Exchange Creditors.

SEVENTH CLAIM FOR RELIEF

(Implied-in-Law Contract with Debtor – Against All Defendants)

38. Trustee realleges all preceding paragraphs.

* * *

1 39. The Debtor conferred a benefit on the Defendants, in the form of the
2 transfer and/or loan of funds to Inland that were ultimately transferred and/or loaned for the
3 personal benefit or use of some or all of the Defendants.

4 40. Defendants were aware of the benefit conferred on them by the
5 Debtor.

6 41. It would be unjust to allow Defendants to retain the benefit conferred
7 on them by Debtor.

8 **EIGHTH CLAIM FOR RELIEF**

9 **(Constructive Trust/Accounting – Against All Defendants)**

10 42. Trustee realleges all preceding paragraphs.

11 43. Trustee is entitled to a declaration that the Defendants hold the
12 Exchange Funds, as well as any other money and/or assets held or controlled by the
13 Defendants, in constructive trust for the benefit of the Exchange Creditors and Debtor.

14 44. Trustee is also entitled to an order temporarily, preliminarily and
15 permanently enjoining Defendants from transferring or otherwise using Exchange Funds and
16 any other money or assets in Defendants' possession or control, and for the remedy of
17 prejudgment attachment.

18 45. Trustee is further entitled to an accounting from Defendants of all
19 transactions involving, using or traceable to any Exchange Funds or other funds from Debtor.

20 **NINTH CLAIM FOR RELIEF**

21 **(Turnover of Property of Estate to Trustee – Against All Defendants)**

22 46. Trustee realleges all preceding paragraphs.

23 47. Defendants are in possession, custody or control of property that the
24 Trustee may use, sell or lease under 11 U.S.C. § 363.

25 48. Pursuant to 11 U.S.C. § 542, Defendants are obligated to deliver to the
26 Trustee all of the property listed on Exhibit A to this Complaint.

1 WHEREFORE, Trustee prays for judgment against the Defendants as
2 follows:
3 A. Finding in favor of Trustee on all of the claims for relief;
4 B. Awarding damages against the Defendants in an amount exceeding
5 \$13 million;
6 C. Declaring that Defendants hold the Exchange Funds, as well as any
7 other money and/or assets held or controlled by the Defendants, in constructive trust for the
8 benefit of the Exchange Creditors and Debtor;
9 D. Ordering the Shareholders to turnover to the Trustee all of the property
10 listed on the attached Exhibit A;
11 E. Requiring Defendants to provide an accounting of all transactions
12 involving, using or traceable to any Exchange Funds or any other funds diverted from
13 Debtor;
14 F. Temporarily, preliminarily and permanently enjoining Defendants
15 from transferring or otherwise using Exchange Funds and other money or assets in
16 Defendants' possession or control, and ordering the remedy of prejudgment attachment;
17 G. Awarding costs and disbursements to the Trustee; and,

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1 H. Granting such other and further relief as the Court deems just and/or
2 equitable.

3 DATED this 15th day of March, 2009.

4 TONKON TORP LLP

5
6 By /s/ David S. Aman

7 Leon Simson, OSB No. 753429 (Lead Attorney)

8 David S. Aman, OSB No. 962106

9 Haley B. Bjerk, OSB No. 062760

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17 Attorneys for Chapter 11 Trustee
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EXHIBIT A

EXHIBIT A

Interests in the following entities:

VSN Properties, LLC
Ashley Ranch, LLC
Blue Sky Buildings, LLC
Century Drive Mobile Home Park, LLC
Century Exchange, Inc.
CFalls Investments, LLC
Corney Investments, LLC
Culver Crossing, LLC
Doctors Court II, LLC
Emmett Ranch, LLC
Fraser Enterprises, LLC
Galveston Point, LLC
Gannon Point, LLC
Hope Ranch Properties, LLC
Hunter Ranch, LLC
Inland Capital Corp.
John Day River Development, LLC
Jordan Capital, LLC
Jordan River Development, LLC
KEB Antler Investments, LLC
Klondike Point, LLC
Lindy Point Properties, LLC
Main Street Quarter, LLC
Marken Heights Development Corp.
Mountain Park, LLC
Neuman Family, LLC
Oasis Estates, LLC
Odell Properties, LLC
Park City Investments, LLC
Powell Butte Investments, LLC
Quinn River Ranch, LLC
Riley Coyote, LLC
SDC Investments, LLC
Shelly Properties, LLC
Sisters Mobile Home Park TIC
Smith Brothers Pushrods, LLC
SoCo Investments, LLC
Stacy Point Investments, LLC
Stone Mountain, LLC
Summit CPA Group, LLP
Summit Accommodators, Inc.
Summit Accommodators Portland, LLC
Summit 1031 Exchange, LLC (Idaho)

Summit 1031 Exchange, LLC (Montana)
Summit 1031 Exchange, LLC (Nevada)
Summit 1031 Exchange, Inc. (Texas)
Summit 1031 Exchange, LLC (Utah)
Summit 1031 Exchange, Inc. (Washington)
Summit 1031 Exchange, LLC (Wyoming)
Touchstone Properties I, LLC
Travis Ranch, LLC
Three Sisters Development, Inc.
Glacier Bridge, LLC
Churchill Capital Management
Carpathian Mtn. Development, LLC
Harz Mtn. Development, LLC
RSN Properties, LLC

Interests in the following real property (listed by state):

Oregon:

Parcel 2, Partition Plat No. 2002-90, Deschutes County, OR
744 NW Broadway Street, Bend, OR 97701
1005 NW Galveston Ave., Bend, OR 97701
1567 SW Chandler Ave., Bend, OR 97702
68656 Highway 20, Sisters, OR 97759
4175 SW Canal Blvd, Redmond, OR 97756
4183 SW Canal Blvd, Redmond, OR 97756
62958 Layton Ave., Bend, OR 97701
265 NW Franklin Ave., Bend, OR 97701
5800 W 1st Ave., Culver, OR 97734
2922 NW Moore Ct., Bend, OR 97701
63475 Hamehook Rd., Bend, OR 97701
63465 Hamehook Rd., Bend, OR 97701
141 SW 15th St., Bend, OR 97702
1600 SW Simpson Ave., Bend, OR 97702
2049 SE Portola Dr., Grants Pass, OR 97526
3167 NW Quiet River Ln., Bend, OR 97701
1771 NW 35th St., Redmond, OR 97756
6101 SW Powell Butte Hwy., Powell Butte, OR 97753
Lots 1 through 21, Tract 1387 – WHISPERING MEADOWS, according to the official plat
thereof on file in the office of the County Clerk of Klamath County, Oregon, except Lots
9, 16, 19 and 20.
63013 Lower Meadow Drive, Bend, OR 97701
63019 Lower Meadow Drive, Bend, OR 97701
North Brinson Business Park Phase I Lot: 28, Deschutes County, OR; Map/Tax lot # 17-12-21-
ac-00200
20434 Ahha Ln., Bend, OR 97702
2403 SW 29th St., Redmond, OR 97756

1241 SW 33rd St., Redmond, OR 97756
Lot 5, Block 14 Valhalla Heights Phase 4, Deschutes County, OR; Lots 1-23 of the Marken Heights Subdivision
18775 Macalpine Loop, Bend, OR 97702
88605 Nautilus Ct., Florence, OR 97439
63565 Deschutes Market Rd., Bend, OR 97701
1771 NW 35th St., Redmond, OR 97756
19570 Buck Canyon Rd., Bend OR 97702
197 NW Outlook Vista, Bend, OR 97701
Lot 32, North Rim on Awbrey Butte, Phase 2, Deschutes County, OR
Maplots 1615 800; 1615 800 AO2 & 800 AO3; 1615 800 AO4 AO5; 1615 1000; and 1615 1800 Deschutes County, OR
17483 Grebe Rd., Bend, OR 97707
Lots 15 and 16 in Block 10 of Wiestoria Addition to Bend, Deschutes County, OR
1644 SE Riviera Dr., Bend, OR 97702
1724 NE Hollow Tree Ln., Bend, OR 97701
2808 SW Reindeer Ave., Redmond, OR 97756
61496 Ward Rd., Bend, OR 97702
86 NW Allen Rd., Bend, OR 97702
15775 Dawn Rd., La Pine, OR 97739
6101 SW Powell Butte Hwy., Powell Butte, OR 97753
6105 SW Powell Butte Hwy., Powell Butte, OR 97753
5 SW Roosevelt Ave., Bend, OR 97702
63210 Cole Rd., Bend, OR 97701
64650 Highway 97, Bend, OR 97701; Maplot 16-12-35-00-00700 Deschutes County, OR
Maplot 17-13-00-00-03200, and 17-13-00-00-03201 Deschutes County, OR
56245 Delta Dr., Blue River, OR 97413
700 SW Ramsey Ave., Grants Pass, OR 97527
61598 River Rd., Bend OR 97702
61653 Cedarwood Rd., Bend, OR 97702
61657 Cedarwood Rd., Bend, OR 97702
19907 Ashwood Dr., Bend, OR 97702
409 N Locust Lane, Sisters, OR 97759
429 N Locust Lane, Sisters, OR 97759
449 N Locust Lane, Sisters, OR 97759
18830 Macalpine Loop, Bend, OR 97702
21380 Butler Market Rd., Bend, OR 97701
1493 NW Remarkable Dr., Bend, OR 97701
7201 SE Weatherby Loop, Prineville, OR 97754
7297 SE Weatherby Loop, Prineville, OR 97754
6084 NW Foster St., Prineville, OR 97754
6352 NW Foster St., Prineville, OR 97754
6102 NW Foster St., Prineville, OR 97754
6223 NW Foster St., Prineville, OR 97754
6279 NW Gray St., Prineville, OR 97754
6327 NW Elliot St., Prineville, OR 97754

11670 NW Irvine St., Prineville, OR 97754
11554 NW Houston Ave., Prineville, OR 97754
11574 NW Houston Ave., Prineville, OR 97754
11590 NW Houston Ave., Prineville, OR 97754
14060 NE Ochoco Highway, Prineville, OR 97754
4700 W. Antler Rd., Redmond, OR 97756
4949 S.W. Highland Ave., Redmond, OR 97756
Lot 1, Block 3, La Pine Acres, Deschutes County, OR
Lots 29 through 38, Block 5, La Pine Acres, Deschutes County, OR
Lots 41 through 43, Block 5, La Pine Acres, Deschutes County, OR
Lots 5, 6 and 7, Block 6, La Pine Acres, Deschutes County, OR
Lots 27 and 28, Block 5, First Addition to Deschutes River Acres, Deschutes County, OR
Lots 31 and 32, Block 5, First Addition to Deschutes River Acres, Deschutes County, OR
Lots 34, 35 and 36, Block 5, First Addition to Deschutes River Acres, Deschutes County, OR
15595 Dorrance Meadow Rd., La Pine, OR 97739
51575 Dorrance Meadow Rd., La Pine, OR 97739
51581 Dorrance Meadow Rd., La Pine, OR 97739
51596 Dorrance Meadow Rd., La Pine, OR 97739
51861 Dorrance Meadow Rd., La Pine, OR 97739
15595 River Drive, La Pine, OR 97739
51520 Reeve Court, La Pine, OR 97739
15522 Deer Ave., La Pine, OR 97739
Maplot 26-13-02BC TL 2900, 3000, 3200, 3300; Coos County, OR

Arizona:

5246 E. Lee St., Tucson, AZ 85712
5521 E. Water St., Tucson, AZ 85712
2508 S. Forgeus Ave., Tucson, AZ 85713
4720 N. Rio Vista Dr., Tucson, AZ 85749
8018 E. 8th St., Tucson, AZ 85710
3631 S. 7th Ave., Tucson, AZ 85713
447 35th St., Tucson, AZ 85713
512 E. Speedway Blvd., Tucson, AZ 85711
514 E. Speedway Blvd., Tucson, AZ 85711
339 W. 19th St., Tucson, AZ 85701
2844 E. 21st St., Tucson, AZ 85713
149 E. 25th St., Tucson, AZ 85713
3762 E. 5th St., Tucson, AZ 85711
10485 E. Observatory Dr., Vail, AZ 85750
1211 S. Rook Ave., Tucson, AZ 85711
1121 S. Tyndall Ave., Tucson, AZ 85719
1730 N. Campbell Ave., Tucson, AZ 85719
Lots 7, 23 and 24, Fullhouse Estates, according to Book 22 of Plats, page 26, records of Navajo County, AZ
Lot 98, Fawn Brook, according to Book 11 of Plats, page 19, records of Navajo County, AZ
4281 S. Khe Sahn Ln., Tucson, AZ 85735

1750 N. Stone Ave., Tucson, AZ 85705

Colorado:

3405 Eastman Dr., Boulder, CO 80305

Idaho:

161 Sugarloaf Pl., Cascade, ID 83611

23 Bannock Circle, Lot 12 Block 28, Victor, ID 83455

56 Rammell Rd., Lot 20 Block 7, Victor, ID 83455

Montana:

179 Schrade Rd., Kalispell, MT 59901

7 Main St., Kalispell, MT 59901

11 Main St., Kalispell, MT 59901

140 1st Avenue East, Kalispell, MT 59901

3328 Columbia Falls Stage Rd., Columbia Falls, MT 59912

7085 Highway 2 E, Columbia Falls, MT 59912

7095 Highway 2 E, Columbia Falls, MT 59912

Lot F, COS 1343, Sec 32, T5S, R1W, Ennis, MT 59729; tax lot 27244212

Texas:

2502 Kinney Rd, Austin, TX 78704

Utah:

1450 Park Ave., Park City, UT 84060

1460 Park Ave., Park City, UT 84060

6804 S 1300 E, Salt Lake City, UT 84121

Mexico:

Unit 3, Lot 4, Corales St., Puerto Escondido, Mexico

034799/00001/1545159v1

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **FIRST AMENDED COMPLAINT** on the parties indicated as "ECF" on the attached List of Interested Parties by electronic means through the Court's Case Management/Electronic Case File system on the date set forth below.

In addition, I served the foregoing on the parties indicated as "Non-ECF" on the attached List of Interested Parties:

☒ by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each attorney's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below;

☐ by causing a copy thereof to be hand-delivered to said attorneys at each attorney's last-known office address on the date set forth below;

☐ by sending a copy thereof via overnight courier in a sealed, prepaid envelope, addressed to each attorney's last-known address on the date set forth below; or

☐ by faxing a copy thereof to each attorney at his last-known facsimile number on the date set forth below.

DATED this 15th day of April 2009.

TONKON TORP LLP

By /s/ David S. Aman

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David S. Aman, OSB No. 962106

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Attorneys for Chapter 11 Trustee

034799/00001/1538646v2

LIST OF INTERESTED PARTIES

***In re: Summit Accommodators, Inc. dba Summit 1031 Exchange
Summit Accommodators, Inc. v. Inland Capital Corp., et al.
U.S. Bankruptcy Court Adv. Pro. No. 09-03023-rld***

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